IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Appeal From Order No.77 of 2006
with
Civil Appln no. 8 of 2006

Stephen Blaise Innocent D'Souza.. Appellant
vs
The Mun Corpn of Bombay and ors..Respondents

Ms Indu Prakash for Indira Reddy for appellant
Mr R A Malandkar for BMC

CORAM; A.M.KHANWILKAR J.

DATED 2.2.2006

P.C.

l. Heard the learned counsel for the parties. Perused the relevant materials on record. Admit. Learned counsel for the respondents waive notice. As short question is involved, appeal is taken up for hearing forthwith by consent.

2. This Appeal From Order takes exception to the order passed by the City Civil Court, Bombay dated 3.l.2006 on notice of motion no. 8 of 2006 in L C Suit Stamp No.l of 2006. By this order the trial court has declined to grant ad-interim relief in favour of the appellant. The main reason that has weighed with the trial court appears to be that the appellant has made no reference to the earlier

proceedings between the Corporation and Mr Nevkar. Indeed, that may be relevant at the time of deciding the notice of motion. If it is established that the plaintiff has suppressed that fact, that will be considered at the final consideration of the notice of motion. The sole question, which the trial court ought to have addressed at the ad-interim stage is whether there was prima facie evidence to accept the stand taken by the plaintiff that the suit structure namely second floor, was in existence prior to the datum line l.4.l962. To support that stand the plaintiff has relied on a document namely notices issued under section 354A dated 6.4.l959 and l9.l.l959. The said documents describe the suit structure as ground to 2nd floor. The documents pertain to the year l959. These notices were issued by the officer of the Bombay Municipal Corporation. If this was the fact, as asserted by the plaintiff and as reinforced from the document, the second floor, which is the suit structure, was in existence in or about l959, which is prior to the datum line.

3. To get over this position the learned counsel for the Corporation contends that the notices under section 354A, relied upon by the plaintiff,are doubtful. To make good this argument reliance is

placed on serial number referred to on the top (left side) of this document on record which mentions as BMP J l590-60 l00 Bk. It is submitted that from this serial number it is clear that the said form of notice was printed in l960. If this is so, the question of using that form for issuing the notice on 6.4.l959 does not arise, for which reason the document pressed into service on behalf of the plaintiff is doubtful. In my opinion it is not possible to entertain such an argument across the bar. The Corporation will have to make good this fact on affidavit and take a clear stand on affidavit giving proper details and demonstrate that the documents relied upon by the plaintiff are bogus and fabricated document. So long as this is not done the question of describing the said document as such, at the stage of ad-interim stage cannot be permitted. This is the glaring error committed by the trial court by not relying upon the documents pressed into service by the plaintiff, for which reason the impugned order will have to be set aside. Instead, ad-interim relief as prayed for by the appellant in prayer (a) of the notice of motion will have to be granted.

4. Hence this appeal is allowed. Ad-interim order in terms of prayer clause (a) of the notice of

motion no.8 of 2006 in L.C.Suit Stamp No. l of 2006 is granted and to continue till the disposal of the notice of motion or till such further order to be passed by the trial court, if situation so warrants.

. Appeal as well as the civil application disposed of in terms of above order.